

Committee :	Date	Classification	Report No.	Agenda Item No.
Licensing Sub Committee	27 November 2018	Unclassified		

Report of : David Tolley Head of Environmental Health & Trading Standards Originating Officer: Samantha Neale Licensing Officer	Title: Licensing Act 2003 Application for a Premises Licence for Lola Hospitality Ltd, 81 Wapping High Street, London, E1W 2YN Ward affected: St Katherine's and Wapping
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1.0 Summary

Applicant: **Lola Hospitality Limited**
 Name and
 Address of Premises: **Lola Hospitality Ltd**
81 Wapping High Street
London
E1W 2YN

Licence sought: **Licensing Act 2003 – Premises licence**

- **The sale by retail of alcohol**
- **Provide late night refreshment**

Objectors: **Local Residents**
Environmental Health Noise Team

2.0 Recommendations

2.1 That the Licensing Committee considers the application and objections then adjudicate accordingly.

LOCAL GOVERNMENT 2000 (Section 97)

LIST OF "BACKGROUND PAPERS" USED IN THE DRAFTING OF THIS REPORT

Brief description of "background paper"

Tick if copy supplied for register

If not supplied, name and telephone number of holder

File
Section 182 Guidance
LBTH Licensing Policy

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3.0 **Background**

- 3.1 This is an application for a premises licence for **(Lola Hospitality Ltd) 81 Wapping High Street, London, E1W 2YN**. The applicant has stated the following: *“ground floor restaurant containing approximately 90 covers with ancillary bar area”*.
- 3.2 A copy of the premises licence application form is enclosed as **Appendix 1**.
- 3.3 The hours that have been applied for are as follows:-

Sale of Alcohol (on sales)

- Monday to Friday, from 10:00 hours until 00:00 hours
- Saturday, from 11:00 hours until 00:00 hours
- Sunday, from 12:00 hours until 00:00 hours

The Provision of Late Night Refreshment (indoors):

- Monday to Friday, from 23:00 hours until 00:00 hours
- Saturday, from 23:00 hours until 00:30 hours on the day after
- Sunday, from 23:00 hours until 23:30 hours

Hours premises is open to the public:

- Monday to Friday, from 10:00 hours until 00:30 on the day after
- Saturday, from 11:00 hours until 00:30 hours on the day after
- Sunday, from 12:00 hours until 00:00 hours

4.0 **Location and Nature of the premises**

- 4.1 Photographs of the venue and immediate vicinity will be provided at the hearing.
- 4.2 The site plan of the venue is included as **Appendix 2**.
- 4.3 Maps showing the vicinity are included as **Appendix 3**.
- 4.4 Details of other licensed venues in the immediate vicinity are included as **Appendix 4**.

5.0 **Licensing Policy and Government Advice**

- 5.1 The Council has adopted a licensing policy and this is available from the Licensing Section, and at the hearing. The revised policy came into effect on 1st November 2018.
- 5.2 Relevant Sections of the policy are brought to the attention of Members within the Licensing Officers report.

- 5.3 The Home Secretary has issued Guidance under Section 182 of the Licensing Act 2003. This is available on the Government's website, www.homeoffice.gov.uk. It was last revised in April 2018.
- 5.4 Relevant Sections of this advice are brought to Members attention within the Licensing Officers report. Members should note however, that in some areas Tower Hamlets, after a proper consideration of local circumstances, has not followed the Government's advice, or has developed it further.

6.0 Representations

- 6.1 All representations have to meet basic legal and administrative requirements. If they fail to do so they cannot be accepted. When rejected the person sending in the representation must be written to, and an explanation for rejection given in writing
- 6.2 A responsible authority or other person can make a representation. There are two tests for other persons and only one for a responsible authority. The two tests are contained in Section 18 of the Act.
- 6.3 All representations must be "about the likely effect of the grant of the premises licence on the promotion of the licensing objectives." Likely means something that will probably happen, i.e. on balance more likely than not.
- 6.4 Representations by responsible authorities do not have to meet the second test of not being vexatious and frivolous. Other persons have to meet this test.
- 6.5 The Home Office recommends that in borderline cases, the benefit of the doubt should be given to the interested party making the representation.
- 6.6 Section 182 Advice by the Home Office concerning relevant, vexatious and frivolous representations is attached as **Appendix 5**.
- 6.7 All the representations in this report have been considered by the relevant officer (Team Leader Licensing & Safety) and determined to have met the requirements of the Licensing Act 2003.

6.8 This hearing is required by the Licensing Act 2003, because relevant representations have been made by the following local residents.

Other persons (residents)	Appendix
Richard Azoulay	6
Faith Beckingham	7
Angela Carlton	8
Sue Carrie	9
Isabell Culpán	10
Kevin and Patricia Eden	11
Julian Foot	12
Dan Goldsack	13
Cameron Grant	14
Holly Greer	15
Keng Ling Koay	16
David Masters	17
Phung Pham	18
Alex Rafalowics-Campbell	19
Peter Talbot	20
Sally Unwin	21
Nicola Veall	22
Montine Walters	23
Elizabeth Willington	24
Trevor Whitton	25

6.9 Representation has also been made by Environmental Health Noise Team. This is included as **Appendix 26**.

6.10 All of the responsible authorities have been consulted about this application. They are as follows:

- The Licensing Authority
- The Metropolitan Police
- The LFEPA (the London Fire and Emergency Planning Authority).
- Planning
- Health and Safety
- Noise (Environmental Health)
- Trading Standards
- Child Protection
- Primary Care Trust (Public Health England)
- Home office Immigration Enforcement

6.11 In addition the application was required to be advertised in a local newspaper and by a blue poster. Only objections that relate to the following licensing objectives are relevant:

- the prevention of crime and disorder
- public safety
- the prevention of public nuisance
- the protection of children from harm

6.12 The objections cover allegations of

- Anti social behaviour from patrons leaving the premises
- Noise while the premise is in use
- Disturbance from patrons leaving the premises on foot
- Disturbance from patrons leaving the premises by car
- Close proximity to residential properties
- Noxious smells or light pollution
- Late operational hours having detrimental effect on welfare of residents (those with early rise professions, families with children etc.)

6.13 There are strict time limits to any representations. The time limits are contained in The Licensing Act 2003 (Premises licences and club premises certificates) Regulations 2005.

6.14 The applicant has offered measures in the operating schedule of the application that address the promotion of the Licensing Objectives. If there were no representations, the Licensing Authority would grant the licence, with conditions consistent with the operating schedule, which are relevant, proportionate and enforceable. Members are asked to consider the schedule and incorporate any conditions as necessary to address the licensing objectives.

7.0 Conditions consistent with Operating Schedule

As offered by the applicant.

7.1 There shall be CCTV in operation at the premises and;

- a) a member of staff who has been nominated in writing and is conversant with the operation of the CCTV system shall be on the premises at all times which the premises.
- b) If the premises are not open, and subject to the tests set out by virtue of the Data Protection Act, within 24 hours of a request for access to the CCTV system from either the police or licensing authority, this staff member must be able to show a Police, HMRC or authorised council officer recent data or footage with the absolute minimum of delay when requested.
- c) All recordings shall be stored for a minimum period of 31 days with date and time stamping.
- d) Recordings shall be made available immediately upon the request of a Police or Licensing officer throughout the preceding 31-day period.
- e) The CCTV system shall be maintained according to the current Home Office specification for premises of this type.

- f) should the equipment become faulty then the Metropolitan Police will be notified by mail and all reasonable efforts made to have any fault rectified within 24 hours.
- 7.2 All members of staff who are authorised to sell alcohol shall be properly trained in the legal requirements and restrictions to sell alcohol.
- a) A record shall be maintained and kept at the Premises detailing the name of each member of staff trained; the date training was provided; details of the person who provided the training and an acknowledgment that staff have been so trained.
 - b) The record shall be available for inspection by authorised officers of the Licensing Authority and the Police at all times the Premises are open.
 - c) Staff shall receive refresher training in the Licensing Act 2003 at intervals of no more than 12 months.
- 7.3 A daily incident log shall be kept at the premises for a period of at least 12 months from the date of last entry, which will record the following:
- a) all crimes reported to the venue
 - b) all ejections of patrons
 - c) any complaints received
 - d) any incidents of disorder
 - e) any faults in the CCTV repaired within 24hrs
 - f) any refusal of the sale of alcohol
 - g) any visit by a relevant authority or emergency service.
 - h) any lost property found or handed to staff at the premises.
 - i) any other relevant incidents to be recorded.
- 7.4 The forecourt and the pavement immediately outside the Premises shall be kept in a clean condition.
- 7.5 External doors shall be fitted with a self-closing device that is maintained in a proper working condition.
- 7.6 A "Challenge 25" age verification policy shall be operated at the Premises during the permitted hours for the sale of alcohol and staff shall be trained in respect of the policy. Staff shall ask for proof of age from anyone they suspect of being less than 25 years of age. The only acceptable forms of identification shall be a photo style driving licence, a passport, a photo identification card bearing the PASS logo in a hologram format, military ID or recognised national photographic identity cards from member countries of the European Union.
- a) The Designated Premises Supervisor shall regularly check the refusals record to ensure it is being consistently used by all staff.

- b) Posters shall be displayed in prominent positions around the bar area advising customers of the Challenge 25 policy in force at the premises
- c) There shall be a minimum of one personal licence holder on duty on the premises at all times when the premises are authorised to sell alcohol.

7.7 Clearly legible notices shall be displayed at all exits from the Premises requesting patrons to respect the needs of local residents and to leave the Premises and area quietly;

7.8 Clearly legible notices shall be prominently displayed at any area used for smoking outside the premises requesting patrons to respect the needs of local residents and to use the area quietly.

8.0 **Conditions Agreed/Requested by *Responsible Authority***

8.1 None

9.0 **Licensing Officer Comments**

9.1 The Live Music Act removed licensing requirements for the following:

- amplified live music and recorded music between 8am and 11pm before audiences of no more than 500 people on premises authorised to sell alcohol for consumption on the premises;
- unamplified live music between 8am and 11pm in all venues.

Further exemptions apply see Section 16.5-16.6 of Section 182 Guidance.

9.2 The following is intended to advise Members of the relevant aspects of the Boroughs Licensing Policy, guidance from the Secretary of State, legislation and good practice. Members may depart from the Council's Licensing Policy and/or Government advice, provide they consider it appropriate to do so, and have clear reasons for their decision.

9.3 Guidance issued under section 182 of the Licensing Act 2003

- ❖ As stated in the guidance it is “provided to licensing authorities in relation to the carrying out of their functions under the 2003 Act.” It is a key medium for promoting best practice, ensuring consistent application and promoting fairness equal treatment and proportionality (1.7).
- ❖ Also “as long as licensing authorities have properly understood this Guidance, they may depart from it if they have good reason to do so and can provide full reasons. Departure from this Guidance

could give rise to an appeal or judicial review, and the reasons given will then be a key consideration for the courts when considering the lawfulness and merits of any decision taken.” Therefore licensing authorities will need to give full reasons for their actions (1.9).

- ❖ Also Members should note “A Licensing Authority may depart from its own policy if the individual circumstances of any case merit such a decision in the interests of the promotion of the licensing objectives.” (1.12)
- ❖ Also, “The licensing authority may not impose any conditions unless its discretion has been exercised following receipt of relevant representations and it is satisfied as a result of a hearing (unless all parties agree a hearing is not necessary) that it is appropriate to impose conditions to promote one or more of the four licensing objectives.” Therefore, conditions may not be imposed for the purpose other than promoting the licensing objectives and in some cases no additional conditions will be appropriate. (10.8)
- ❖ Necessary conditions should emerge from a risk assessment by the applicant, which should then be reflected in the operating schedule (10.4).
- ❖ The Guidance states: “Where there are objections to an application to extend the hours during which licensable activities are to be carried on and the licensing authority determines that this would undermine the licensing objectives, it may reject the application or grant it with appropriate conditions and/or different hours from those requested.” (10.14)
- ❖ Mandatory conditions must be imposed (10.25) and censorship avoided (10.17).
- ❖ The Guidance states: “It is still permitted to sell alcohol using promotions (as long as they are compatible with any other licensing condition that may be in force), and the relevant person should ensure that the price of the alcohol is not less than the permitted price. Detailed guidance on the use of promotions is given in the guidance document available on the Gov.uk website.” (10.58)
- ❖ Also, “Licensing authorities should not attach standardised blanket conditions promoting fixed prices for alcoholic drinks to premises licences or club licences or club premises certificates in an area.” (10.21)

9.4 The Licensing Act 2003 permits children of any age to be on the premises which primarily sell alcohol providing they are accompanied by an adult. It is not necessary to make this a condition.

- 9.5 In all cases the Members should make their decision on the civil burden of proof, that is “the balance of probability.”
- 9.6 In all cases Members should consider whether or not primary legislation is the appropriate method of regulation and should only consider licence conditions when the circumstances in their view are not already adequately covered elsewhere.
- 9.7 The Government has advised that conditions must be tailored to the individual type, location and characteristics of the premises and events concerned. Conditions cannot seek to manage the behaviour of customers once they are beyond the direct management of the licence holder and their staff and standardised conditions should be avoided where they cannot be shown to be appropriate. (1.16/1.17)
- 9.8 The Council’s Licensing Policy generally expects applicants to address the licensing objectives and discuss how to do this with the relevant responsible authorities.
- 9.9 In **Appendices 27 – 34** Members are given general advice, and also have explanations of the Council’s Licensing Policy, Government advice and other legislation relating to the matters previously identified.

10.0 **Legal Comments**

- 10.1 The Council’s legal officer will give advice at the hearing.

11.0 **Finance Comments**

- 11.1 There are no financial implications in this report.

12.0 Appendices

Appendix 1	A copy of premises licence application form
Appendix 2	Site plan
Appendix 3	Maps of the surrounding area
Appendix 4	Other licensed venues in the area
Appendix 5	Section 182 Advice by the DCMS- Relevant, vexatious and frivolous representations
Appendices 6 – 25	Representation of local residents
Appendix 26	Representations of Environmental Health
Appendix 27	Licensing Officer comments on noise while the premise is in use
Appendix 28	Licensing Officer comments on Anti-Social Behaviour on premises
Appendix 29	Licensing officer comments on Access and egress problems
Appendix 30	Licensing Officer comments on crime and disorder on the premises
Appendix 31	Licensing Officer comments on crime and disorder from patrons leaving the premises
Appendix 32	The protection of children from harm
Appendix 33	Planning
Appendix 34	Licensing Policy relating to hours of trading.